

1 IGNACIA S. MORENO
2 Assistant Attorney General
3 Environment and Natural Resources Division
4 EILEEN T. MCDONOUGH
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
5 Washington, DC 20044
Telephone: (202) 514-3126
6 Fax: (202) 514-8865
7 Email: eileen.mcdonough@usdoj.gov
Attorney for Defendant
8

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10 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION
11

12 WILDEARTH GUARDIANS,

Case No. 4:11-CV-5651-YGR and
Consolidated Case No. 4:11-CV-5694-YGR

13 Plaintiff,

14 v.

15 LISA JACKSON, in her official capacity as
Administrator of the Environmental Protection
Agency,

Response to Motion for Reconsideration
of June 14, 2012 Order

16 Defendant.
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19 On June 14, 2012, the Court issued an order rejecting the parties' stipulation for entry of
final judgment pursuant to Fed. R. Civ. P. 54(b) on the claims dismissed by the Court on May 7,
2012 (referred to as the "Prevention of Significant Deterioration" or "PSD" claims"). Plaintiffs
in these consolidated actions have moved for reconsideration of the June 14 Order. Defendant
Lisa P. Jackson, Administrator, United States Environmental Protection Agency ("EPA"), does
not oppose the entry of final judgment, but takes no position on whether Plaintiffs have
demonstrated that reconsideration is warranted.

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21 Plaintiffs' Memorandum of Points and Authorities ("Memo") contains certain assertions
that require clarification. As the Plaintiffs note, counsel for the parties have reached agreement

on most of the terms of a proposed consent decree that would resolve the remaining non-PSD claims in this matter, but counsel for EPA cannot bind the Agency to those terms. Counsel for EPA can only recommend those terms for approval by authorized officials. While counsel for EPA are not now aware of any reason that the settlement would not be approved by the necessary officials at EPA and the Department of Justice, counsel cannot foreclose that possibility. Furthermore, even if such approval is forthcoming, EPA will have to provide public notice and seek comment on any proposed consent decree as required by section 113(g) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(g). Again, counsel for EPA cannot assure the Court that this process will not result in a decision to withdraw or withhold consent to a consent decree.

In addition, even though EPA does not oppose the entry of final judgment on the PSD claims, the Agency certainly does not concur with all the allegations in Plaintiffs' Memo. At this point, however, given that EPA does not oppose the entry of partial final judgment on the PSD claims, there is no need to analyze the allegations in Plaintiffs' Memo.

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

/s/ Eileen T. McDonough
EILEEN T. MCDONOUGH
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
Telephone: (202) 514-3126
Fax: (202) 514-8865
Email: eileen.mcdonough@usdoj.gov
Attorney for Defendants